

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4719 of 2005
in
FIRST APPEAL 489 OF 1998.

Sunderdas Sadharam Batra
(Since deceased, now represented
by legal heirs
Smt. Hansa Sunderdas Batra & Ors. ..Applicants

versus

Miss Geeta Sunderdas Batra
& Others ..Respondents

Mr.S.P.Kanuga with Mr. S.N.Nath for the Applicant

Mr.J.P.Sen i/b. M/s. Desai Diwanji & Co. for
the Respondent Nos.1 to 10.

Coram : S.R.Sathe, J.
Dated : 23rd Feb., 2006

P.C.

1. Heard learned Counsel for the parties.
Perused the record.

2. By virtue of order passed by this Court
(Coram: D.G.Deshpande, J.) on 2.9.1995 the present
applicant is permitted to sell the suit premises on
the terms and conditions mentioned in the said
order. In pursuance of the said order the applicant
has decided to sell the suit property to

Mr.Phudinawala Mohammed Rafique Usman and Mr.Raees Aziz Qureshi for Rupees One Crore and agreement to sell has been executed after accepting the earnest money of Rs.10,00,000/-. the applicant has therefore prayed that he be allowed to complete the transaction in terms of order dated 2.9.2005 and the applicant be directed to deposit the amount of Rs.49,35,000/- within the time that may be deemed fit by the Court.

3. On this application the respondent Ms. Geeta S. Badra has filed say and submitted that respondents desire to purchase the said property for Rs.1 Crore with a view that the property to remain in the family. Accordingly, the proposal of the respondent is also placed on record. Marked X. However, the learned Advocate for the applicant submitted that the order passed on 2.9.2005 was challenged by the present respondent in the Supreme Court. However, the Apex Court has confirmed the order dated 2.9.2005 passed by this Court. Till this time the respondents had not given any offer and now when the applicant has already entered into agreement and accepted the earnest money, it would not be proper to permit the respondents to purchase

the property.

4. Firstly, it must be noted that the respondent is not giving any extra consideration for the property in question. If really the respondent had desire and intention to purchase the property, she should have given offer when the present applicant had shown willingness to purchase the property and deposit 50% of the amount in the court. But, we find that at that time no such offer was given. Naturally the applicant proceeded with the matter and has entered into agreement to sale. It is not at all the case of the applicant that the property at which the applicant has decided to sell the suit premises is not the market price or that there is any other hurdle in disposing of the property as suggested by the applicant. Admittedly, this is not a case where the respondent is having any right of preemption.

5. Another important thing which is to be noted is that while giving the proposal for purchase of the property the respondent has stated that she or her nominee will deposit in the Honourable Court Rs.1 Crore as the price of the property. This also

in fact indicates that the respondent herself is not interested or is not in a position to purchase such property for huge amount. Naturally, it must be held that there is no substance in her say that she wants to purchase the property with a view that it will remain in the family.

6. Considering all these aspects, there is no reason to permit the respondent at this stage to purchase the suit property. Hence the application is allowed. The petitioner to complete the transaction in terms of order dated 2.9.2005 with the persons with whom agreement to sale is executed on 18.11.2005 as stated in his application and deposit the amount as per the said order in this Court in any event by the end of March 2006.

7. C.A. disposed of accordingly.

8. At this stage, the learned Advocate for the respondent submitted that the above mentioned order be stayed for a period of eight weeks as they intend to approach the higher Court. However, as stated earlier, the order dated 2.9.2005 was already challenged in the Apex Court and even at that time

the present respondent had not given any offer to purchase the property, so I have no hesitation to hold that there is no reason to stay the above mentioned order. So, prayer in that behalf made by the learned Advocate for the respondent is rejected.

(S.R.Sathe, J.)